

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4661 of 1996

WITH

CIVIL APPLICATION NO. 10069 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VARSHABEN D PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner
MR.UDAY BHATT for Respondent No.1
MR.P.R.JOSHI FOR MR.V.H.PATEL for Respondent No.2.
MS KHYATI P HATHI for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/12/96

ORAL JUDGEMENT

The petitioner was working as Primary Teacher with respondent No.3 i.e. District Primary Education Officer, District Panchayat, Jamnagar. She applied for appointment as Primary Teacher under Panch Mahals District. She could not produce the original documents at the time of interview for the post of Primary Teacher under Panch Mahals District because her original documents were with the District Primary Education

Officer, Jamnagar. On that ground she was not given 2% marks for drawing examination and consequentially the appointment was not given to her. She filed present Special Civil Application on 4.7.1996 and on 8.7.1996 it was recorded that the petitioner shall apply for releasing original certificates which were deposited with the District Panchayat, Jamnagar. These documents were then directed to be released by this Court in terms of the order dated 21.8.1996 and in the meantime the selection committee under the District Education Committee of Panch Mahals District prepared the select list on 31.7.1996 and appointment orders were also issued accordingly. It is, therefore, clear that the petitioner was helpless with regard to the production of the original documents at the time of interview for appointment in the Panch Mahals District as Primary Teacher. It is common case of the parties that these documents have now been released by the District Panchayat, Jamnagar and same have been received by the District Education Committee, Panch Mahals District. Mr. Joshi appearing for Respondent No.2 submits that select list has already been prepared on 31.7.1996 and the petitioner could not be given 2% marks and therefore her name could not be included at the time of issuance of the appointment orders on the basis of the select list. It is therefore clear that the petitioner was facing state of helplessness. No party can be allowed to take advantage of other party's helplessness or reasons which are beyond that party's control and comprehension.

In this view of the matter, it will be just and appropriate to direct Respondent No.2 to consider petitioner's candidature for appointment as Primary Teacher on merits as if original documents were available with her at the time of interview and after according marks which were denied to her earlier to which she may be found entitled on the basis of the original documents her name may be interposed in the select list for the appointment as a Primary Teacher and thereafter, in case the petitioner is found to have obtained requisite marks for appointment as Primary Teacher under Panch Mahals District Panchayat the appointment shall not be denied to her only because she had not produced documents at the time of interview and the question of issuing appointment orders shall be decided by adding marks which she could have obtained had she produced the documents at the time of interview.

This Special Civil Application is accordingly allowed with the direction as above to be carried out within a period of two weeks from the date certified copy

of this order is made available to the District Panchayat, Panch Mahals. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

CIVIL APPLICATION NO.10069 OF 1996.

In view of the orders passed in the main Special Civil Application whereby the Special Civil Application itself has been allowed, no orders are required to be passed in the Civil Application. This Civil Application is disposed of accordingly.
